

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
MINNESOTA PCS LIMITED PARTNERSHIP	)	File No. 0000594476
	)	
Notification of Compliance and Request for	)	
Extension of Broadband PCS Construction	)	
Requirements for Call Sign KNLF388	)	
in Fergus Falls, Minnesota BTA	)	
	)	

**ORDER**

**Adopted: February 26, 2002**

**Released: February 27, 2002**

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. On September 17, 2001, Minnesota PCS Limited Partnership (“MN PCS”) filed a notification with the Wireless Telecommunications Bureau stating that it failed to meet the Commission’s coverage requirements for its broadband Personal Communications Services (“PCS”) license identified by call sign KNLF388.<sup>1</sup> In the notification, MN PCS also requested an extension of time to come into compliance with the coverage requirement.<sup>2</sup> For the reasons set forth below, we dismiss the notification as insufficient, deny the extension request, and notify MN PCS that its license automatically terminated on September 17, 2001. We do grant special temporary authority (“STA”), on our own motion, to allow MN PCS to continue its current operations, subject to certain conditions set forth below, while transitioning its subscribers from the C-block authorization in the above-referenced market.

**II. BACKGROUND**

2. On September 17, 1996, MN PCS’s predecessor-in-interest, Western Minnesota PCS Limited Partnership, was authorized to operate a broadband PCS system on the C-block in the Fergus Falls, Minnesota Basic Trading Area (“Fergus Falls BTA”) under call sign KNLF388. In 1998, pursuant to the Commission’s installment payment restructuring for broadband PCS C-block licensees, MN PCS disaggregated its license, retaining 15 MHz of the spectrum and returning 15 MHz of the spectrum to the Commission for relicensing.<sup>3</sup> Because of this disaggregation, the construction requirement for MN PCS’s license changed in that MN PCS was now required to provide service to at least one-quarter of the population of the Fergus Falls BTA or make a showing of substantial service within five years of initial

<sup>1</sup> See ULS File No. 0000594476 (*Notification*).

<sup>2</sup> See ULS File No. 0000594476, Attachment entitled “Compliance Filing and Request for Extension” (*Extension Request*).

<sup>3</sup> See Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Report and Order and Further Notice of Proposed Rule Making*, WT Docket 97-82, 12 FCC Rcd. 16436 (1997), as modified on reconsideration, 13 FCC Rcd. 8345 (1998).

license grant (*i.e.*, by September 17, 2001).<sup>4</sup> On September 17, 2001, MN PCS electronically filed a notification with the Commission which stated that its level of coverage as of the construction deadline was only 9.9 percent of the population of the Fergus Falls BTA.<sup>5</sup> Noting that it failed to meet the coverage requirement of section 24.203(b) of the Commission's rules, MN PCS requested an additional 12 months to meet the requisite level of coverage.<sup>6</sup>

### III. DISCUSSION

3. As an initial matter, we find that MN PCS did not comply with the requirements of section 24.203(b) of the Commission's rules because, as it acknowledged, its coverage as of the five-year construction deadline (*i.e.*, 9.9 percent of the relevant population) fell well below the minimum coverage of 25 percent required by the rule and MN PCS did not elect to make a demonstration of substantial service in the market. Therefore, without the grant of an extension of time or waiver of the rules, MN PCS's license terminated automatically on the construction deadline (*i.e.*, September 17, 2001). Because MN PCS did timely request an extension to comply with the 25 percent coverage requirement, we will address the sufficiency of the extension request.<sup>7</sup>

4. Pursuant to sections 1.946(e) and 24.843(b) of the Commission's rules, an extension of time to complete construction will be granted if the licensee shows that the failure to complete construction is due to causes beyond its control.<sup>8</sup> Pursuant to section 1.925 of the Commission's rules, waiver may be granted if the petitioner establishes either that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or (2) where the petitioner establishes unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>9</sup> Furthermore, in recognizing that compliance with the broadband PCS construction requirements may be difficult,<sup>10</sup> the Commission has stated that in situations in which the

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<sup>4</sup> See 47 C.F.R. § 24.203(b). Otherwise, C-block licensees must provide service to one-third of the population of their licensed area within five years and two-thirds of the population within ten years. See 47 C.F.R. § 24.203(a). Furthermore, pursuant to 47 C.F.R. § 1.946(d), MN PCS was required to submit a notification of its compliance with the coverage or substantial service obligations within fifteen days of the construction deadline (*i.e.*, by October 2, 2001) or have requested an extension of time to meet the obligations, pursuant to 47 C.F.R. § 1.946(e), by the construction deadline (*i.e.*, September 17, 2001).

<sup>5</sup> See *Notification*, "Exhibit 1 – Population Demonstration." The Fergus Falls BTA is comprised of the following six counties: Otter Tail, Grant, Stevens, Douglas, Pope, and Wadena. According to the *Notification*, MN PCS is providing service to only the northwest corner of Otter Tail County. *Id.*

<sup>6</sup> 47 C.F.R. § 24.203(b). *Extension Request* at 2.

<sup>7</sup> We note that MN PCS filed its extension request as part of a "Notification" on the Commission's Universal Licensing System ("ULS"). MN PCS should have filed the request as an "Extension Request" on ULS. Nonetheless, because the extension request was timely and it was related to the construction notification, we will address the merits of the extension request despite it being improperly filed. We also note that MN PCS did not specifically request a waiver of the PCS construction rules; however, in order to fully address MN PCS's request, we will interpret the extension request as effectively a request for waiver of the timing component of the broadband PCS construction rule.

<sup>8</sup> 47 C.F.R. §§ 1.946, 24.843. Section 1.946(e) also states specific circumstances that would not warrant an extension of time to complete construction. 47 C.F.R. § 1.946(e)(2)-(3).

<sup>9</sup> 47 C.F.R. § 1.925. Alternatively, pursuant to section 1.3, the Commission has authority to waive its rules if there is "good cause" to do so. 47 C.F.R. § 1.3. See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>10</sup> See Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd. 4957, 5019 (1994).

circumstances are unique and the public interest would be served, it would consider waiving the PCS construction requirements on a case-by-case basis.<sup>11</sup>

5. As explained herein, we find that the record does not support grant of an extension or a waiver of the rules for MN PCS to meet the construction requirements for the Fergus Falls BTA. MN PCS first argues that an extension is warranted because it had difficulties in constructing antennas in the Fergus Falls BTA because of local opposition to tower construction in that market.<sup>12</sup> Section 1.946(e)(2) of the Commission's rules, however, expressly prohibits an extension of time to meet the construction requirements for failure "to obtain an antenna site."<sup>13</sup> Moreover, MN PCS has provided no evidence that its situation is unique or unusual compared to the difficulties experienced by most PCS carriers in constructing their networks.

6. MN PCS also maintains that an extension is warranted because the population of the market is "sparsely settled" and "concentrated in a few centers" where the opposition to tower construction exists.<sup>14</sup> Again, we note that difficulty in site acquisition is specifically excluded as a reason for granting an extension of time to meet the coverage requirements, and MN PCS failed to provide specific information on any factors that it believed were unique or unusual compared to the circumstances faced by other PCS operators.<sup>15</sup> Moreover, MN PCS knew, or should have known, the population patterns of the market prior to acquiring the license several years ago and could have reasonably taken these patterns into account in constructing its network within the BTA.

7. MN PCS further asserts that an extension will permit it time to secure additional capital for renewed construction efforts or to complete a sale of its PCS licenses to an entity that will expand coverage through additional tower construction.<sup>16</sup> Section 1.946(e)(2), however, also specifically excludes lack of financing as grounds for an extension, and section 1.946(e)(3) states that an extension of time to meet construction requirements will not be granted because the licensee intends to assign the authorization.<sup>17</sup> Again, MN PCS fails to cite any unique or unusual circumstances regarding financing or the potential sale that would warrant a waiver of the PCS construction rule.

8. MN PCS also argues that the current subscribers on its system would lose PCS service if the license is terminated.<sup>18</sup> According to Commission records and our own research, however, two cellular carriers are currently providing service throughout all six counties that comprise the Fergus Falls BTA, and at least one other broadband PCS carrier provides service to portions of these counties.<sup>19</sup> Moreover,

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<sup>11</sup> *Id.*, citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>12</sup> *Extension Request* at 2.

<sup>13</sup> 47 C.F.R. § 1.946(e)(2).

<sup>14</sup> *Extension Request* at 2. MN PCS stated that until it (or any other PCS operator) is able to secure tower siting rights in these population centers, it would not be able to meet the 25% threshold. *Id.*

<sup>15</sup> It is worth noting that MN PCS filed its extension request on the last day of the construction period, which although timely, does not support a high level of diligence in meeting the coverage requirement and appraising the Commission of difficulties encountered in constructing its PCS network in the Fergus Falls BTA.

<sup>16</sup> *Id.* at 2-3.

<sup>17</sup> 47 C.F.R. §§ 1.946(e)(2)-(3).

<sup>18</sup> *Id.* at 3.

<sup>19</sup> ACC Minnesota License, LLC is providing service on the cellular A-block under call sign KNKN375 and RCC Minnesota, Inc. is providing service on the cellular B-block under call sign KNKN421, both in the cellular market (CMA486) that encompasses the Fergus Falls BTA. Sprint PCS is providing service to portions of all six counties on the A-block of the Major Trading Area that includes the Fergus Falls BTA (MTA012). See [www.sprintpcs.com](http://www.sprintpcs.com).

we note that MN PCS also holds the F-block PCS authorization for the Fergus Falls BTA and we see nothing that would prevent MN PCS from using the 10 MHz of spectrum from the F-block to continue to provide service to its current subscribers within the Fergus Falls BTA.<sup>20</sup> Because MN PCS's current subscribers have at least three other options for mobile voice service and MN PCS has a viable alternative to continue service to its current subscribers, we believe that enforcement of the PCS construction requirement in this case is not contrary to the public interest. Thus, we find that MN PCS's situation neither meets the standard for an extension of time under section 1.946(e) nor warrants a waiver of the PCS construction rule, and therefore, MN PCS's license for the C-block authorization in the Fergus Falls BTA automatically terminated on September 17, 2001, pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules.<sup>21</sup>

9. We also find that it is in the public interest to grant, on our own motion, an STA to MN PCS, subject to certain conditions, in order to transition MN PCS's current subscribers off the C-block spectrum in the Fergus Falls BTA.<sup>22</sup> First, STA is granted to MN PCS for 180 days from release of this Order.<sup>23</sup> Second, to the extent that MN PCS's customers will receive either reduced or no service from MN PCS as a result of termination of this license, MN PCS must provide written notice to each of its current subscribers that: (i) its C-block authorization has been terminated; (ii) it is only authorized to provide service to existing customers on the C-block spectrum under a grant of special temporary authority; and (iii) it will provide customers with at least 30-days written notice prior to permanently discontinuing service.<sup>24</sup> Third, to the extent that MN PCS is relying solely on the C-block spectrum to provide service in the Fergus Falls BTA, it is not permitted to solicit or add new subscribers in that market while it is operating under this STA. Fourth, MN PCS shall, as described above, provide written notice to each of its subscribers at least 30 days prior to permanently discontinuing service to the extent that subscribers will receive either reduced or no service from MN PCS in the Fergus Falls BTA.<sup>25</sup> Finally, after the expiration of the STA, MN PCS will no longer be authorized to provide further service, and shall cease any and all operations, on the broadband PCS C-block spectrum within the Fergus Falls BTA.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, that the Notification of Construction filed by Minnesota PCS Limited Partnership on September 17, 2001 IS DISMISSED.

11. IT IS FURTHER ORDERED, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, that the Request for Extension of Time to Come into Compliance with the Five-Year Requirement filed by Minnesota PCS Limited Partnership on September 17, 2001 IS DENIED.

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<sup>20</sup> MN PCS's F-block authorization is licensed under call sign KNLG948. We note that this authorization also has an upcoming 5-year construction deadline of April 28, 2002 and that MN PCS has filed neither a notification of construction nor a request for extension of time with respect to the F-block license.

<sup>21</sup> 47 C.F.R. § 24.203(b).

<sup>22</sup> In the event that MN PCS does not want to continue operation within the Fergus Falls BTA, the STA will terminate once the Commission receive notification from MN PCS that it wishes to terminate the STA.

<sup>23</sup> We do not anticipate that MN PCS will need the entire 180 days provided by the STA to move its subscribers to properly authorized spectrum.

<sup>24</sup> MN PCS shall provide a copy of such notice to the Commission.

<sup>25</sup> MN PCS shall also provide a copy of such notice to the Commission.

12. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(f), and section 1.931(a) of the Commission's rules, 47 C.F.R. § 1.931(a), Special Temporary Authority IS GRANTED *sua sponte* to Minnesota PCS Limited Partnership, subject to the terms and conditions set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel  
Deputy Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau